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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/813,592	03/21/2001	Daniel J. Lubera	0275M-000320/CPA	3509
27572	7590	06/03/2005	EXAMINER	
HARNESS, DICKEY & PIERCE, P.L.C.			BRITTAIN, JAMES R	
P.O. BOX 828			ART UNIT	
BLOOMFIELD HILLS, MI 48303			PAPER NUMBER	

3677

DATE MAILED: 06/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/813,592	<b>Applicant(s)</b> LUBERA ET AL.	
	<b>Examiner</b> James R. Brittain	<b>Art Unit</b> 3677	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 9-14, 18, 19, 22, 68-94 and 101-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-14, 18, 19, 22, 68-94 and 101-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

A

**DETAILED ACTION**

***Allowable Subject Matter***

The indicated allowability of claim 9-14, 18, 19, 22, 68-94, 112 and 113 is withdrawn in view of a new interpretation reference(s) to Kuffel (US 5759004) and Anderson (US 5251467) after review of the claims as part of the appeal process. Rejections based on the new interpretations follow.

In view of the appeal brief filed on March 7, 2005, PROSECUTION IS HEREBY REOPENED. A new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



Daniel Stodola  
SPE GAU 3679. DPS

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 101-103, 105 and 107-110 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kuffel (US 5759004).

Kuffel (figures 1, 9 and 10) teaches a resilient clip 10 that secures a first member 30 to a second member 26, 28. The resilient clip comprising a flange portion (lower portion of 14), an inserting portion 18 and a retaining portion 20. The insertion portion is coupled to the flange portion and inserts into a hole 32 formed into the first member. The inserting portion has two portions that are disposed on opposite sides of a longitudinal side of a longitudinal axis of the resilient clip (Figs. 1-9). Each portion of the insertion portion defines an outer planar surface that is angled upwardly toward the flange portion and outwardly away from the longitudinal axis (Fig. 2, 3, 7, 8 and 10). The retaining portion is coupled to the insertion portion and includes at least one wing member (20) for each of the portions of the insertion portion. Each wing member has a warped planar outer surface that coextends with the outer planar surface of an associated one of the portions of the insertion portion (Figs. 2-4 and 6-10). The warped outer surface is disposed on a same side of the longitudinal axis as the outer planar surface of the associated one of the portions of the insertion portion (Figs. 2-4 and 6-10). Each wing member terminates at a tip portion and each of the tip portions co-engage the first member (Figs. 1-10).

Kuffel also discloses that:

Each of the tip portions is angled such that a lateral end of the first one of the wing members extends above a corresponding lateral end of a second one of the wing members that is disposed on an opposite side of the longitudinal axis (Fig. 4);

The tip portion is defined by an included angle of about 30 degrees to about 80 degrees (figure 4);

Each tip portion has a flat edge for contacting the first member (figures 1-10);

Each of the first and second wing members further includes a base portion (16a) that is fixedly coupled to the insertion portion (Figs. 2-5). The first and second wing members being turned by curving such that the their tip portions are turned relative to their base portion by an angle of about 5 degrees to about 45 degrees (Figs. 6);

The angle is about 30 degrees;

The resilient clip further includes a spacing structure (16, upper part of 14) having first (upper part of 14) and second (16) flange members (Figs. 1-10). The first flange member is coupled to the flange portion and the second flange member is coupled to an outer edge of the first flange member and tapering downwardly toward the retaining portion and outwardly from the flange portion (Figs. 1-5, 7, 8 and 10); and

The spacing structure is formed from resilient metal.

Further, claims 101-113 utilize the term “warped” to describe the structure. This term is not found in the specification as filed and review of a dictionary indicates that warp can mean “1. To turn or twist out of shape.” as found in the *Second College Edition: The American Heritage*

*Dictionary* (1982). In other words “warped” has a meaning other than twisted and the curved portion of the device of Kuffel is considered to be turned so as to be warped.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 104 and 111 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuffel (US 5759004).

Kuffel (figures 1, 9 and 10) teaches a resilient clip 10 that secures a first member 30 to a second member 26, 28. The resilient clip comprising a flange portion (lower portion of 14), an inserting portion 18 and a retaining portion 20. The insertion portion is coupled to the flange portion and inserts into a hole 32 formed into the first member. The inserting portion has two portions that are disposed on opposite sides of a longitudinal side of a longitudinal axis of the resilient clip (Figs. 1-9). Each portion of the insertion portion defines an outer planar surface that is angled upwardly toward the flange portion and outwardly away from the longitudinal axis (Fig. 2, 3, 7, 8 and 10). The retaining portion is coupled to the insertion portion and includes at least one wing member (20) for each of the portions of the insertion portion. Each wing member has a warped planar outer surface that coextends with the outer planar surface of an associated one of the portions of the insertion portion (Figs. 2-4 and 6-10). The warped outer surface is disposed on a same side of the longitudinal axis as the outer planar surface of the associated one

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of the portions of the insertion portion (Figs. 2-4 and 6- 10). Each wing member terminates at a tip portion and each of the tip portions co-engage the first member (Figs. 1-10).

Kuffel also discloses that:

Each of the tip portions is angled such that a lateral end of the first one of the wing members extends above a corresponding lateral end of a second one of the wing members that is disposed on an opposite side of the longitudinal axis (Fig. 4);

The tip portion is defined by an included angle of about 30 degrees to about 80 degrees (figure 4);

Each tip portion has a flat edge for contacting the first member (figures 1-10);

Each of the first and second wing members further includes a base portion (16a) that is fixedly coupled to the insertion portion (Figs. 2-5). The first and second wing members being turned by curving such that the their tip portions are turned relative to their base portion by an angle of about 5 degrees to about 45 degrees (Figs. 6);

The angle is about 30 degrees;

The resilient clip further includes a spacing structure (16, upper part of 14) having first (upper part of 14) and second (16) flange members (Figs. 1-10). The first flange member is coupled to the flange portion and the second flange member is coupled to an outer edge of the first flange member and tapering downwardly toward the retaining portion and outwardly from the flange portion (Figs. 1-5, 7, 8 and 10); and

The spacing structure is formed from resilient metal.

Further, claims 101-113 utilize the term “warped” to describe the structure. This term is not found in the specification as filed and review of a dictionary indicates that warp can mean “1.

To turn or twist out of shape.” as found in the *Second College Edition: The American Heritage Dictionary* (1982). In other words “warped” has a meaning other than twisted and the curved portion of the device of Kuffel is considered to be turned so as to be warped.

The difference is in the included angle being about 30 degrees rather than about 60 degrees and the device not being made of plastic, but metal. However, a change in the shape to a different angle would have been obvious since the same resilient characteristics are employed. A change in the size of a prior art device is a design consideration within the skill in the art. In re Rose, 220 F.2d 459, 105 USPQ 237 (CCPA). Further, plastic is widely used in the art of resilient clips because it has a lighter weight and provides protection to the clip due to weather exposure.

Claims 9-14, 18, 19, 22, 68-94 and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuffel (US 5759004) in view of Anderson (US 5251467).

Kuffel (figures 1, 9 and 10) teaches a resilient clip 10 that secures a first member 30 to a second member 26, 28. The resilient clip comprising a flange portion (lower portion of 14), an inserting portion 18 and a retaining portion 20. The insertion portion is coupled to the flange portion and inserts into a hole 32 formed into the first member. The inserting portion has two portions that are disposed on opposite sides of a longitudinal side of a longitudinal axis of the resilient clip (Figs. 1-9). Each portion of the insertion portion defines an outer planar surface that is angled upwardly toward the flange portion and outwardly away from the longitudinal axis (Fig. 2, 3, 7, 8 and 10). The retaining portion is coupled to the insertion portion and includes at least one wing member (20) for each of the portions of the insertion portion. Each wing member has a warped planar outer surface that coextends with the outer planar surface of an associated



one of the portions of the insertion portion (Figs. 2-4 and 6-10). The warped outer surface is disposed on a same side of the longitudinal axis as the outer planar surface of the associated one of the portions of the insertion portion (Figs. 2-4 and 6-10). Each wing member terminates at a tip portion and each of the tip portions co-engage the first member (Figs. 1-10).

Kuffel also discloses that:

Each of the tip portions is angled such that a lateral end of the first one of the wing members extends above a corresponding lateral end of a second one of the wing members that is disposed on an opposite side of the longitudinal axis (Fig. 4);

The tip portion is defined by an included angle of about 30 degrees to about 80 degrees (figure 4);

Each tip portion has a flat edge for contacting the first member (figures 1-10);

Each of the first and second wing members further includes a base portion (16a) that is fixedly coupled to the insertion portion (Figs. 2-5). The first and second wing members being turned by curving such that their tip portions are turned relative to their base portion by an angle of about 5 degrees to about 45 degrees (Figs. 6);

The angle is about 30 degrees;

The resilient clip further includes a spacing structure (16, upper part of 14) having first (upper part of 14) and second (16) flange members (Figs. 1-10). The first flange member is coupled to the flange portion and the second flange member is coupled to an outer edge of the first flange member and tapering downwardly toward the retaining portion and outwardly from the flange portion (Figs. 1-5, 7, 8 and 10); and

The spacing structure is formed from resilient metal.

The difference is that the legs are not twisted.

However, Anderson (figures 5-8) explicitly teaches the use of two legs 25, 27 that are twisted as indicated in col. 6, lines 63-64, thereby establishing in the art that it is desirable to utilize a pair of legs to maintain a fastener within an aperture by explicitly twisting both of the legs. Such a configuration aids in affecting the insertion force while still maintaining good retention of the fastener. Additionally, Anderson teaches that it is desirable to have the ends of the twisted legs serrated so as to better engage the aperture.

As it would be beneficial to improve the insertion force and retention characteristics of the legs of the fastener of Kuffel, it would have been obvious to modify the curved or turned legs of the fastener of Kuffel so as to be twisted as taught by Anderson so as to have better insertion force and retention characteristics.

In regard to the connection of the flange to the structure, these connections are conventional as indicated on page 9 of applicant's specification, so the use of such connections are within the level of skill in the art.

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

The rejection is new in that it is based on a new interpretation of the term "warped" than was considered before. Since "warped" was not used in the specification as filed, a dictionary definition is appropriate as indicated above, and leads to a broader meaning than that considered heretofore. Additionally, the term "twisted" is explicitly found in Anderson to describe a desirable feature of the resilient legs and argument must be made on this point.

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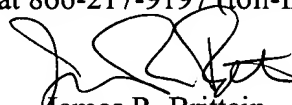
***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents of Meyer (US 3871430, figure 5) and Behrendt (US 4448376, figure 1) each teach fastener structure explicitly showing either one or a plurality of twisted legs thereby adding further weight to the use of twisted legs being old and well known.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB